

AMENDED IN ASSEMBLY AUGUST 17, 2015

AMENDED IN ASSEMBLY JULY 6, 2015

AMENDED IN ASSEMBLY JUNE 25, 2015

AMENDED IN SENATE MAY 5, 2015

SENATE BILL

No. 475

Introduced by Senator Monning

February 26, 2015

An act to amend Sections ~~1788 and 1771~~, 1788, and 1788.4 of the Health and Safety Code, relating to continuing care contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 475, as amended, Monning. Continuing care contracts: cancellation: payments.

Existing law requires a continuing care retirement facility, as defined, to possess a certificate of authority issued by the State Department of Social Services before it can enter into a continuing care contract, as defined. Existing law requires that a continuing care contract be in writing and contain specified information. Existing law *states provides that* a continuing care contract may be canceled without cause by written notice from either party within 90 days of the resident's initial occupancy.

Existing law requires ~~the~~ a provider to pay, during the cancellation period, all refunds owed to a resident within 14 days after a resident makes possession of the living unit available to the provider. Existing law requires ~~the~~ a provider to pay a lump-sum payment that is conditioned upon resale of a unit to ~~the~~ a resident within 14 days after resale of the unit.

This bill would require ~~the~~ a continuing care retirement facility to pay the full lump-sum payment that is conditioned upon resale of a unit to ~~the~~ a resident within 14 days after resale of ~~the~~ a unit. The bill would require ~~the~~ a continuing care retirement facility, for contracts signed after January 1, 2016, to pay ~~the~~ a resident or his or her estate a specified portion of the full lump-sum payment, notwithstanding a provider's documented good-faith effort to resell the unit, if the unit remains vacant 120 days after the resident's termination. The bill would require any payment balance not paid to ~~the~~ a resident within 120 days to accrue interest at a rate not lower than ~~the United States prime lending rate~~ 4% until the full lump-sum payment is made. The bill would require any payment balance not paid to ~~the~~ a resident within 180 days to accrue interest at a rate not lower than ~~2% plus the United States prime lending rate~~ 6% until the full lump-sum payment is made. The bill would require ~~the~~ a facility to make the lump-sum payment to ~~the~~ a resident's estate if the resident is deceased. *The bill would provide that the repayment by a provider of all or a portion of an entrance fee before the resale of a unit would not subject any other entrance fee to the refund reserve requirements, except as provided.*

The bill would authorize the department to determine if a provider has failed to make a good faith effort to reoccupy or resell a unit for which a lump-sum payment is conditioned upon the resale of the unit upon receiving a complaint from the resident or the resident's estate. The bill would require the provider to repay the full lump-sum payment owed to the resident or the resident's estate within 14 days of the department's determination that the provider failed to make a good faith effort to reoccupy or resell the unit, and would require the provider to reimburse the department for the costs incurred by the department associated with its determination.

The bill would make corresponding changes to require a continuing care contract to contain a statement that a provider is prohibited from charging the resident or his or her estate a monthly fee once a unit has been permanently vacated by the resident, unless the fee is part of an equity interest contract. The bill would also require a continuing care contract that provides for a refund or repayment of a lump sum of all or part of the entrance fee to include a statement that the provider will make a good faith effort to reoccupy or resell a unit for which a lump-sum payment is conditioned upon resale of the unit.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 **SECTION 1.** *Section 1771 of the Health and Safety Code is*
2 *amended to read:*

3 1771. Unless the context otherwise requires, the definitions in
4 this section govern the interpretation of this chapter.

5 (a) (1) “Affiliate” means any person, corporation, limited
6 liability company, business trust, partnership, unincorporated
7 association, or other legal entity that directly or indirectly controls,
8 is controlled by, or is under common control with, a provider or
9 applicant.

10 (2) “Affinity group” means a grouping of entities sharing a
11 common interest, philosophy, or connection (e.g., military officers,
12 religion).

13 (3) “Annual report” means the report each provider is required
14 to file annually with the department, as described in Section 1790.

15 (4) “Applicant” means any entity, or combination of entities,
16 that submits and has pending an application to the department for
17 a permit to accept deposits and a certificate of authority.

18 (5) “Assisted living services” includes, but is not limited to,
19 assistance with personal activities of daily living, including
20 dressing, feeding, toileting, bathing, grooming, mobility, and
21 associated tasks, to help provide for and maintain physical and
22 psychosocial comfort.

23 (6) “Assisted living unit” means the living area or unit within
24 a continuing care retirement community that is specifically
25 designed to provide ongoing assisted living services.

26 (7) “Audited financial statement” means financial statements
27 prepared in accordance with generally accepted accounting
28 principles including the opinion of an independent certified public
29 accountant, and notes to the financial statements considered
30 customary or necessary to provide full disclosure and complete
31 information regarding the provider’s financial statements, financial
32 condition, and operation.

33 (b) (reserved)

34 (c) (1) “Cancel” means to destroy the force and effect of an
35 agreement or continuing care contract.

36 (2) “Cancellation period” means the 90-day period, beginning
37 when the resident physically moves into the continuing care

1 retirement community, during which the resident may cancel the
2 continuing care contract, as provided in Section 1788.2.

3 (3) “Care” means nursing, medical, or other health-related
4 services, protection or supervision, assistance with the personal
5 activities of daily living, or any combination of those services.

6 (4) “Cash equivalent” means certificates of deposit and United
7 States treasury securities with a maturity of five years or less.

8 (5) “Certificate” or “certificate of authority” means the
9 certificate issued by the department, properly executed and bearing
10 the State Seal, authorizing a specified provider to enter into one
11 or more continuing care contracts at a single specified continuing
12 care retirement community.

13 (6) “Condition” means a restriction, specific action, or other
14 requirement imposed by the department for the initial or continuing
15 validity of a permit to accept deposits, a provisional certificate of
16 authority, or a certificate of authority. A condition may limit the
17 circumstances under which the provider may enter into any new
18 deposit agreement or contract, or may be imposed as a condition
19 precedent to the issuance of a permit to accept deposits, a
20 provisional certificate of authority, or a certificate of authority.

21 (7) “Consideration” means some right, interest, profit, or benefit
22 paid, transferred, promised, or provided by one party to another
23 as an inducement to contract. Consideration includes some
24 forbearance, detriment, loss, or responsibility, that is given,
25 suffered, or undertaken by a party as an inducement to another
26 party to contract.

27 (8) “Continuing care contract” means a contract that includes
28 a continuing care promise made, in exchange for an entrance fee,
29 the payment of periodic charges, or both types of payments. A
30 continuing care contract may consist of one agreement or a series
31 of agreements and other writings incorporated by reference.

32 (9) “Continuing care promise” means a promise, expressed or
33 implied, by a provider to provide one or more elements of care to
34 an elderly resident for the duration of his or her life or for a term
35 in excess of one year. Any such promise or representation, whether
36 part of a continuing care contract, other agreement, or series of
37 agreements, or contained in any advertisement, brochure, or other
38 material, either written or oral, is a continuing care promise.

39 (10) “Continuing care retirement community” means a facility
40 located within the State of California where services promised in

1 a continuing care contract are provided. A distinct phase of
2 development approved by the department may be considered to
3 be the continuing care retirement community when a project is
4 being developed in successive distinct phases over a period of
5 time. When the services are provided in residents' own homes, the
6 homes into which the provider takes those services are considered
7 part of the continuing care retirement community.

8 (11) "Control" means directing or causing the direction of the
9 financial management or the policies of another entity, including
10 an operator of a continuing care retirement community, whether
11 by means of the controlling entity's ownership interest, contract,
12 or any other involvement. A parent entity or sole member of an
13 entity controls a subsidiary entity provider for a continuing care
14 retirement community if its officers, directors, or agents directly
15 participate in the management of the subsidiary entity or in the
16 initiation or approval of policies that affect the continuing care
17 retirement community's operations, including, but not limited to,
18 approving budgets or the administrator for a continuing care
19 retirement community.

20 (d) (1) "Department" means the State Department of Social
21 Services.

22 (2) "Deposit" means any transfer of consideration, including a
23 promise to transfer money or property, made by a depositor to any
24 entity that promises or proposes to promise to provide continuing
25 care, but is not authorized to enter into a continuing care contract
26 with the potential depositor.

27 (3) "Deposit agreement" means any agreement made between
28 any entity accepting a deposit and a depositor. Deposit agreements
29 for deposits received by an applicant prior to the department's
30 release of funds from the deposit escrow account shall be subject
31 to the requirements described in Section 1780.4.

32 (4) "Depository" means a bank or institution that is a member
33 of the Federal Deposit Insurance Corporation or a comparable
34 deposit insurance program.

35 (5) "Depositor" means any prospective resident who pays a
36 deposit. Where any portion of the consideration transferred to an
37 applicant as a deposit or to a provider as consideration for a
38 continuing care contract is transferred by a person other than the
39 prospective resident or a resident, that third-party transferor shall
40 have the same cancellation or refund rights as the prospective

1 resident or resident for whose benefit the consideration was
2 transferred.

3 (6) “Director” means the Director of Social Services.

4 (e) (1) “Elderly” means an individual who is 60 years of age
5 or older.

6 (2) “Entity” means an individual, partnership, corporation,
7 limited liability company, and any other form for doing business.
8 Entity includes a person, sole proprietorship, estate, trust,
9 association, and joint venture.

10 (3) “Entrance fee” means the sum of any initial, amortized, or
11 deferred transfer of consideration made or promised to be made
12 by, or on behalf of, a person entering into a continuing care contract
13 for the purpose of ensuring care or related services pursuant to that
14 continuing care contract or as full or partial payment for the
15 promise to provide care for the term of the continuing care contract.
16 Entrance fee includes the purchase price of a condominium,
17 cooperative, or other interest sold in connection with a promise of
18 continuing care. An initial, amortized, or deferred transfer of
19 consideration that is greater in value than 12 times the monthly
20 care fee shall be presumed to be an entrance fee.

21 (4) “Equity” means the value of real property in excess of the
22 aggregate amount of all liabilities secured by the property.

23 (5) “Equity interest” means an interest held by a resident in a
24 continuing care retirement community that consists of either an
25 ownership interest in any part of the continuing care retirement
26 community property or a transferable membership that entitles the
27 holder to reside at the continuing care retirement community.

28 (6) “Equity project” means a continuing care retirement
29 community where residents receive an equity interest in the
30 continuing care retirement community property.

31 (7) “Equity securities” shall refer generally to large and
32 midcapitalization corporate stocks that are publicly traded and
33 readily liquidated for cash, and shall include shares in mutual funds
34 that hold portfolios consisting predominantly of these stocks and
35 other qualifying assets, as defined by Section 1792.2. Equity
36 securities shall also include other similar securities that are
37 specifically approved by the department.

38 (8) “Escrow agent” means a bank or institution, including, but
39 not limited to, a title insurance company, approved by the

1 department to hold and render accountings for deposits of cash or
2 cash equivalents.

3 (f) “Facility” means any place or accommodation where a
4 provider provides or will provide a resident with care or related
5 services, whether or not the place or accommodation is constructed,
6 owned, leased, rented, or otherwise contracted for by the provider.

7 (g) (reserved)

8 (h) (reserved)

9 (i) (1) “Inactive certificate of authority” means a certificate that
10 has been terminated under Section 1793.8.

11 (2) “Investment securities” means any of the following:

12 (A) Direct obligations of the United States, including obligations
13 issued or held in book-entry form on the books of the United States
14 Department of the Treasury or obligations the timely payment of
15 the principal of, and the interest on, which are fully guaranteed by
16 the United States.

17 (B) Obligations, debentures, notes, or other evidences of
18 indebtedness issued or guaranteed by any of the following:

19 (i) The Federal Home Loan Bank System.

20 (ii) The Export-Import Bank of the United States.

21 (iii) The Federal Financing Bank.

22 (iv) The Government National Mortgage Association.

23 (v) The Farmer’s Home Administration.

24 (vi) The Federal Home Loan Mortgage Corporation of the
25 Federal Housing Administration.

26 (vii) Any agency, department, or other instrumentality of the
27 United States if the obligations are rated in one of the two highest
28 rating categories of each rating agency rating those obligations.

29 (C) Bonds of the State of California or of any county, city and
30 county, or city in this state, if rated in one of the two highest rating
31 categories of each rating agency rating those bonds.

32 (D) Commercial paper of finance companies and banking
33 institutions rated in one of the two highest categories of each rating
34 agency rating those instruments.

35 (E) Repurchase agreements fully secured by collateral security
36 described in subparagraph (A) or (B), as evidenced by an opinion
37 of counsel, if the collateral is held by the provider or a third party
38 during the term of the repurchase agreement, pursuant to the terms
39 of the agreement, subject to liens or claims of third parties, and

1 has a market value, which is determined at least every 14 days, at
2 least equal to the amount so invested.

3 (F) Long-term investment agreements, which have maturity
4 dates in excess of one year, with financial institutions, including,
5 but not limited to, banks and insurance companies or their affiliates,
6 if the financial institution's paying ability for debt obligations or
7 long-term claims or the paying ability of a related guarantor of the
8 financial institution for these obligations or claims, is rated in one
9 of the two highest rating categories of each rating agency rating
10 those instruments, or if the short-term investment agreements are
11 with the financial institution or the related guarantor of the financial
12 institution, the long-term or short-term debt obligations, whichever
13 is applicable, of which are rated in one of the two highest long-term
14 or short-term rating categories, of each rating agency rating the
15 bonds of the financial institution or the related guarantor, provided
16 that if the rating falls below the two highest rating categories, the
17 investment agreement shall allow the provider the option to replace
18 the financial institution or the related guarantor of the financial
19 institution or shall provide for the investment securities to be fully
20 collateralized by investments described in subparagraph (A), and,
21 provided further, if so collateralized, that the provider has a
22 perfected first security lien on the collateral, as evidenced by an
23 opinion of counsel and the collateral is held by the provider.

24 (G) Banker's acceptances or certificates of deposit of, or time
25 deposits in, any savings and loan association that meets any of the
26 following criteria:

27 (i) The debt obligations of the savings and loan association, or
28 in the case of a principal bank, of the bank holding company, are
29 rated in one of the two highest rating categories of each rating
30 agency rating those instruments.

31 (ii) The certificates of deposit or time deposits are fully insured
32 by the Federal Deposit Insurance Corporation.

33 (iii) The certificates of deposit or time deposits are secured at
34 all times, in the manner and to the extent provided by law, by
35 collateral security described in subparagraph (A) or (B) with a
36 market value, valued at least quarterly, of no less than the original
37 amount of moneys so invested.

38 (H) Taxable money market government portfolios restricted to
39 obligations issued or guaranteed as to payment of principal and
40 interest by the full faith and credit of the United States.

1 (I) Obligations the interest on which is excluded from gross
2 income for federal income tax purposes and money market mutual
3 funds whose portfolios are restricted to these obligations, if the
4 obligations or mutual funds are rated in one of the two highest
5 rating categories by each rating agency rating those obligations.

6 (J) Bonds that are not issued by the United States or any federal
7 agency, but that are listed on a national exchange and that are rated
8 at least “A” by Moody’s Investors Service, or the equivalent rating
9 by Standard and Poor’s Corporation or Fitch Investors Service.

10 (K) Bonds not listed on a national exchange that are traded on
11 an over-the-counter basis, and that are rated at least “Aa” by
12 Moody’s Investors Service or “AA” by Standard and Poor’s
13 Corporation or Fitch Investors Service.

14 (j) (reserved)

15 (k) (reserved)

16 (l) “Life care contract” means a continuing care contract that
17 includes a promise, expressed or implied, by a provider to provide
18 or pay for routine services at all levels of care, including acute
19 care and the services of physicians and surgeons, to the extent not
20 covered by other public or private insurance benefits, to a resident
21 for the duration of his or her life. Care shall be provided under a
22 life care contract in a continuing care retirement community having
23 a comprehensive continuum of care, including a skilled nursing
24 facility, under the ownership and supervision of the provider on
25 or adjacent to the premises. No change may be made in the monthly
26 fee based on level of care. A life care contract shall also include
27 provisions to subsidize residents who become financially unable
28 to pay their monthly care fees.

29 (m) (1) “Monthly care fee” means the fee charged to a resident
30 in a continuing care contract on a monthly or other periodic basis
31 for current accommodations and services including care, board,
32 or lodging. Periodic entrance fee payments or other prepayments
33 shall not be monthly care fees.

34 (2) “Monthly fee contract” means a continuing care contract
35 that requires residents to pay monthly care fees.

36 (n) “Nonambulatory person” means a person who is unable to
37 leave a building unassisted under emergency conditions in the
38 manner described by Section 13131.

39 (o) (reserved)

1 (p) (1) “Per capita cost” means a continuing care retirement
2 community’s operating expenses, excluding depreciation, divided
3 by the average number of residents.

4 (2) “Periodic charges” means fees paid by a resident on a
5 periodic basis.

6 (3) “Permanent closure” means the voluntary or involuntary
7 termination or forfeiture, as specified in subdivisions (a), (b), (g),
8 (h), and (i) of Section 1793.7, of a provider’s certificate of authority
9 or license, or another action that results in the permanent relocation
10 of residents. Permanent closure does not apply in the case of a
11 natural disaster or other event out of the provider’s control.

12 (4) “Permit to accept deposits” means a written authorization
13 by the department permitting an applicant to enter into deposit
14 agreements regarding a single specified continuing care retirement
15 community.

16 (5) “Prepaid contract” means a continuing care contract in which
17 the monthly care fee, if any, may not be adjusted to cover the actual
18 cost of care and services.

19 (6) “Preferred access” means that residents who have previously
20 occupied a residential living unit have a right over other persons
21 to any assisted living or skilled nursing beds that are available at
22 the community.

23 (7) “Processing fee” means a payment to cover administrative
24 costs of processing the application of a depositor or prospective
25 resident.

26 (8) “Promise to provide one or more elements of care” means
27 any expressed or implied representation that one or more elements
28 of care will be provided or will be available, such as by preferred
29 access.

30 (9) “Proposes” means a representation that an applicant or
31 provider will or intends to make a future promise to provide care,
32 including a promise that is subject to a condition, such as the
33 construction of a continuing care retirement community or the
34 acquisition of a certificate of authority.

35 (10) “Provider” means an entity that provides continuing care,
36 makes a continuing care promise, or proposes to promise to provide
37 continuing care. “Provider” also includes any entity that controls
38 an entity that provides continuing care, makes a continuing care
39 promise, or proposes to promise to provide continuing care. The
40 department shall determine whether an entity controls another

1 entity for purposes of this article. No homeowner's association,
2 cooperative, or condominium association may be a provider.

3 (11) "Provisional certificate of authority" means the certificate
4 issued by the department, properly executed and bearing the State
5 Seal, under Section 1786. A provisional certificate of authority
6 shall be limited to the specific continuing care retirement
7 community and number of units identified in the applicant's
8 application.

9 (q) (reserved)

10 (r) (1) "Refund reserve" means the reserve a provider is required
11 to maintain, as provided in Section 1792.6.

12 (2) (A) "Refundable contract" means a continuing care contract
13 that includes a promise, expressed or implied, by the provider to
14 pay an entrance fee refund or to repurchase the transferor's unit,
15 membership, stock, or other interest in the continuing care
16 retirement community when the promise to refund some or all of
17 the initial entrance fee extends beyond the resident's sixth year of
18 residency. Providers that enter into refundable contracts shall be
19 subject to the refund reserve requirements of Section 1792.6. ~~A~~

20 (B) *A continuing care contract that includes a promise to repay
21 all or a portion of an entrance fee that is conditioned upon
22 reoccupancy or resale of the unit previously occupied by the
23 resident shall not be considered a refundable contract for purposes
24 of the refund reserve requirements of Section 1792.6, provided
25 that this conditional promise of repayment is not referred to by the
26 applicant or provider as a "refund." A provider may repay all or
27 a portion of an entrance fee that is conditioned upon resale of the
28 unit before the resale of the unit. The repayment of an entrance
29 fee before the resale of the unit shall not cause any other entrance
30 fee to be subject to the refund reserve requirements of Section
31 1792.6, provided that the provider does not promise, at the time
32 of contracting or thereafter, to make this type of early repayment,
33 represent that the provider intends to make this type of early
34 repayment, or indicate that the provider has a practice of making
35 this type of early repayment.*

36 (3) "Resale fee" means a levy by the provider against the
37 proceeds from the sale of a transferor's equity interest.

38 (4) "Reservation fee" refers to consideration collected by an
39 entity that has made a continuing care promise or is proposing to
40 make this promise and has complied with Section 1771.4.

(5) “Resident” means a person who enters into a continuing care contract with a provider, or who is designated in a continuing care contract to be a person being provided or to be provided services, including care, board, or lodging.

(6) “Residential care facility for the elderly” means a housing arrangement as defined by Section 1569.2.

(7) “Residential living unit” means a living unit in a continuing care retirement community that is not used exclusively for assisted living services or nursing services.

(8) “Residential temporary relocation” means the relocation of one or more residents, except in the case of a natural disaster that is out of the provider’s control, from one or more residential living units, assisted living units, skilled nursing units, or a wing, floor, or entire continuing care retirement community building, due to a change of use or major repairs or renovations. A residential temporary relocation shall mean a relocation pursuant to this subdivision that lasts for a period of at least nine months but that does not exceed 18 months without the written agreement of the resident.

(s) (reserved)

(t) (1) “Termination” means the ending of a continuing care contract as provided for in the terms of the continuing care contract.

(2) “Transfer trauma” means death, depression, or regressive behavior, that is caused by the abrupt and involuntary transfer of an elderly resident from one home to another and results from a loss of familiar physical environment, loss of well-known neighbors, attendants, nurses and medical personnel, the stress of an abrupt break in the small routines of daily life, or the loss of visits from friends and relatives who may be unable to reach the new facility.

(3) “Transferor” means a person who transfers, or promises to transfer, consideration in exchange for care and related services under a continuing care contract or proposed continuing care contract, for the benefit of another. A transferor shall have the same rights to cancel and obtain a refund as the depositor under the deposit agreement or the resident under a continuing care contract.

SECTION 1.

SEC. 2. Section 1788 of the Health and Safety Code is amended to read:

1 1788. (a) A continuing care contract shall contain all of the
2 following:

3 (1) The legal name and address of each provider.

4 (2) The name and address of the continuing care retirement
5 community.

6 (3) The resident's name and the identity of the unit the resident
7 will occupy.

8 (4) If there is a transferor other than the resident, the transferor
9 shall be a party to the contract and the transferor's name and
10 address shall be specified.

11 (5) If the provider has used the name of any charitable or
12 religious or nonprofit organization in its title before January 1,
13 1979, and continues to use that name, and that organization is not
14 responsible for the financial and contractual obligations of the
15 provider or the obligations specified in the continuing care contract,
16 the provider shall include in every continuing care contract a
17 conspicuous statement that clearly informs the resident that the
18 organization is not financially responsible.

19 (6) The date the continuing care contract is signed by the
20 resident and, where applicable, any other transferor.

21 (7) The duration of the continuing care contract.

22 (8) A list of the services that will be made available to the
23 resident as required to provide the appropriate level of care. The
24 list of services shall include the services required as a condition
25 for licensure as a residential care facility for the elderly, including
26 all of the following:

27 (A) Regular observation of the resident's health status to ensure
28 that his or her dietary needs, social needs, and needs for special
29 services are satisfied.

30 (B) Safe and healthful living accommodations, including
31 housekeeping services and utilities.

32 (C) Maintenance of house rules for the protection of residents.

33 (D) A planned activities program, which includes social and
34 recreational activities appropriate to the interests and capabilities
35 of the resident.

36 (E) Three balanced, nutritious meals and snacks made available
37 daily, including special diets prescribed by a physician as a medical
38 necessity.

39 (F) Assisted living services.

40 (G) Assistance with taking medications.

1 (H) Central storing and distribution of medications.

2 (I) Arrangements to meet health needs, including arranging
3 transportation.

4 (9) An itemization of the services that are included in the
5 monthly fee and the services that are available at an extra charge.
6 The provider shall attach a current fee schedule to the continuing
7 care contract. The schedule shall state that a provider is prohibited
8 from charging the resident or his or her estate a monthly fee once
9 a unit has been permanently vacated by the resident, unless the fee
10 is part of an equity interest contract.

11 (10) The procedures and conditions under which a resident may
12 be voluntarily and involuntarily transferred from a designated
13 living unit. The transfer procedures, at a minimum, shall include
14 provisions addressing all of the following circumstances under
15 which a transfer may be authorized:

16 (A) A continuing care retirement community may transfer a
17 resident under the following conditions, taking into account the
18 appropriateness and necessity of the transfer and the goal of
19 promoting resident independence:

20 (i) The resident is nonambulatory. The definition of
21 “nonambulatory,” as provided in Section 13131, shall either be
22 stated in full in the continuing care contract or be cited. If Section
23 13131 is cited, a copy of the statute shall be made available to the
24 resident, either as an attachment to the continuing care contract or
25 by specifying that it will be provided upon request. If a
26 nonambulatory resident occupies a room that has a fire clearance
27 for nonambulatory residents, transfer shall not be necessary.

28 (ii) The resident develops a physical or mental condition that
29 endangers the health, safety, or well-being of the resident or another
30 person.

31 (iii) The resident’s condition or needs require the resident’s
32 transfer to an assisted living care unit or skilled nursing facility,
33 because the level of care required by the resident exceeds that
34 which may be lawfully provided in the living unit.

35 (iv) The resident’s condition or needs require the resident’s
36 transfer to a nursing facility, hospital, or other facility, and the
37 provider has no facilities available to provide that level of care.

38 (B) Before the continuing care retirement community transfers
39 a resident under any of the conditions set forth in subparagraph
40 (A), the community shall satisfy all of the following requirements:

1 (i) Involve the resident and the resident's responsible person,
2 as defined in paragraph (6) of subdivision (r) of Section 87101 of
3 Title 22 of the California Code of Regulations, and upon the
4 resident's or responsible person's request, family members, or the
5 resident's physician or other appropriate health professional, in
6 the assessment process that forms the basis for the level of care
7 transfer decision by the provider. The provider shall offer an
8 explanation of the assessment process. If an assessment tool or
9 tools, including scoring and evaluating criteria, are used in the
10 determination of the appropriateness of the transfer, the provider
11 shall make copies of the completed assessment available upon the
12 request of the resident or the resident's responsible person.

13 (ii) Prior to sending a formal notification of transfer, the provider
14 shall conduct a care conference with the resident and the resident's
15 responsible person, and upon the resident's or responsible person's
16 request, family members, and the resident's health care
17 professionals, to explain the reasons for transfer.

18 (iii) Notify the resident and the resident's responsible person
19 of the reasons for the transfer in writing.

20 (iv) Notwithstanding any other provision of this subparagraph,
21 if the resident does not have impairment of cognitive abilities, the
22 resident may request that his or her responsible person not be
23 involved in the transfer process.

24 (v) The notice of transfer shall be made at least 30 days before
25 the transfer is expected to occur, except when the health or safety
26 of the resident or other residents is in danger, or the transfer is
27 required by the resident's urgent medical needs. Under those
28 circumstances, the written notice shall be made as soon as
29 practicable before the transfer.

30 (vi) The written notice shall contain the reasons for the transfer,
31 the effective date, the designated level of care or location to which
32 the resident will be transferred, a statement of the resident's right
33 to a review of the transfer decision at a care conference, as provided
34 for in subparagraph (C), and for disputed transfer decisions, the
35 right to review by the Continuing Care Contracts Branch of the
36 State Department of Social Services, as provided for in
37 subparagraph (D). The notice shall also contain the name, address,
38 and telephone number of the department's Continuing Care
39 Contracts Branch.

1 (vii) The continuing care retirement community shall provide
2 sufficient preparation and orientation to the resident to ensure a
3 safe and orderly transfer and to minimize trauma.

4 (C) The resident has the right to review the transfer decision at
5 a subsequent care conference that shall include the resident, the
6 resident's responsible person, and upon the resident's or
7 responsible person's request, family members, the resident's
8 physician or other appropriate health care professional, and
9 members of the provider's interdisciplinary team. The local
10 ombudsperson may also be included in the care conference, upon
11 the request of the resident, the resident's responsible person, or
12 the provider.

13 (D) For disputed transfer decisions, the resident or the resident's
14 responsible person has the right to a prompt and timely review of
15 the transfer process by the Continuing Care Contracts Branch of
16 the State Department of Social Services.

17 (E) The decision of the department's Continuing Care Contracts
18 Branch shall be in writing and shall determine whether the provider
19 failed to comply with the transfer process pursuant to
20 subparagraphs (A) to (C), inclusive. Pending the decision of the
21 Continuing Care Contracts Branch, the provider shall specify any
22 additional care the provider believes is necessary in order for the
23 resident to remain in his or her unit. The resident may be required
24 to pay for the extra care, as provided in the contract.

25 (F) Transfer of a second resident when a shared accommodation
26 arrangement is terminated.

27 (11) Provisions describing any changes in the resident's monthly
28 fee and any changes in the entrance fee refund payable to the
29 resident that will occur if the resident transfers from any unit,
30 including, but not limited to, terminating his or her contract after
31 18 months of residential temporary relocation, as defined in
32 paragraph (8) of subdivision (r) of Section 1771. Unless the fee is
33 part of an equity interest contract, a provider is prohibited from
34 charging the resident or his or her estate a monthly fee once a unit
35 has been permanently vacated by the resident.

36 (12) The provider's continuing obligations, if any, in the event
37 a resident is transferred from the continuing care retirement
38 community to another facility.

1 (13) The provider's obligations, if any, to resume care upon the
2 resident's return after a transfer from the continuing care retirement
3 community.

4 (14) The provider's obligations to provide services to the
5 resident while the resident is absent from the continuing care
6 retirement community.

7 (15) The conditions under which the resident must permanently
8 release his or her living unit.

9 (16) If real or personal properties are transferred in lieu of cash,
10 a statement specifying each item's value at the time of transfer,
11 and how the value was ascertained.

12 (A) An itemized receipt that includes the information described
13 above is acceptable if incorporated as a part of the continuing care
14 contract.

15 (B) When real property is or will be transferred, the continuing
16 care contract shall include a statement that the deed or other
17 instrument of conveyance shall specify that the real property is
18 conveyed pursuant to a continuing care contract and may be subject
19 to rescission by the transferor within 90 days from the date that
20 the resident first occupies the residential unit.

21 (C) The failure to comply with this paragraph shall not affect
22 the validity of title to real property transferred pursuant to this
23 chapter.

24 (17) The amount of the entrance fee.

25 (18) In the event two parties have jointly paid the entrance fee
26 or other payment that allows them to occupy the unit, the
27 continuing care contract shall describe how any refund of entrance
28 fees is allocated.

29 (19) The amount of any processing fee.

30 (20) The amount of any monthly care fee.

31 (21) For continuing care contracts that require a monthly care
32 fee or other periodic payment, the continuing care contract shall
33 include the following:

34 (A) A statement that the occupancy and use of the
35 accommodations by the resident is contingent upon the regular
36 payment of the fee.

37 (B) The regular rate of payment agreed upon (per day, week,
38 or month).

39 (C) A provision specifying whether payment will be made in
40 advance or after services have been provided.

1 (D) A provision specifying the provider will adjust monthly
2 care fees for the resident's support, maintenance, board, or lodging,
3 when a resident requires medical attention while away from the
4 continuing care retirement community.

5 (E) A provision specifying whether a credit or allowance will
6 be given to a resident who is absent from the continuing care
7 retirement community or from meals. This provision shall also
8 state, when applicable, that the credit may be permitted at the
9 discretion or by special permission of the provider.

10 (F) A statement of billing practices, procedures, and timelines.
11 A provider shall allow a minimum of 14 days between the date a
12 bill is sent and the date payment is due. A charge for a late payment
13 may only be assessed if the amount and any condition for the
14 penalty is stated on the bill.

15 (G) A statement that the provider is prohibited from charging
16 the resident or his or her estate a monthly fee once a unit has been
17 permanently vacated by the resident, unless the fee is part of an
18 equity interest contract.

19 (22) All continuing care contracts that include monthly care
20 fees shall address changes in monthly care fees by including either
21 of the following provisions:

22 (A) For prepaid continuing care contracts, which include
23 monthly care fees, one of the following methods:

24 (i) Fees shall not be subject to change during the lifetime of the
25 agreement.

26 (ii) Fees shall not be increased by more than a specified number
27 of dollars in any one year and not more than a specified number
28 of dollars during the lifetime of the agreement.

29 (iii) Fees shall not be increased in excess of a specified
30 percentage over the preceding year and not more than a specified
31 percentage during the lifetime of the agreement.

32 (B) For monthly fee continuing care contracts, except prepaid
33 contracts, changes in monthly care fees shall be based on projected
34 costs, prior year per capita costs, and economic indicators.

35 (23) A provision requiring that the provider give written notice
36 to the resident at least 30 days in advance of any change in the
37 resident's monthly care fees or in the price or scope of any
38 component of care or other services.

39 (24) A provision indicating whether the resident's rights under
40 the continuing care contract include any proprietary interests in

1 the assets of the provider or in the continuing care retirement
2 community, or both. Any statement in a contract concerning an
3 ownership interest shall appear in a large-sized font or print.

4 (25) If the continuing care retirement community property is
5 encumbered by a security interest that is senior to any claims the
6 residents may have to enforce continuing care contracts, a provision
7 shall advise the residents that any claims they may have under the
8 continuing care contract are subordinate to the rights of the secured
9 lender. For equity projects, the continuing care contract shall
10 specify the type and extent of the equity interest and whether any
11 entity holds a security interest.

12 (26) Notice that the living units are part of a continuing care
13 retirement community that is licensed as a residential care facility
14 for the elderly and, as a result, any duly authorized agent of the
15 department may, upon proper identification and upon stating the
16 purpose of his or her visit, enter and inspect the entire premises at
17 any time, without advance notice.

18 (27) A conspicuous statement, in at least 10-point boldface type
19 in immediate proximity to the space reserved for the signatures of
20 the resident and, if applicable, the transferor, that provides as
21 follows: “You, the resident or transferor, may cancel the transaction
22 without cause at any time within 90 days from the date you first
23 occupy your living unit. See the attached notice of cancellation
24 form for an explanation of this right.”

25 (28) Notice that during the cancellation period, the continuing
26 care contract may be canceled upon 30 days’ written notice by the
27 provider without cause, or that the provider waives this right.

28 (29) The terms and conditions under which the continuing care
29 contract may be terminated after the cancellation period by either
30 party, including any health or financial conditions.

31 (30) A statement that, after the cancellation period, a provider
32 may unilaterally terminate the continuing care contract only if the
33 provider has good and sufficient cause.

34 (A) Any continuing care contract containing a clause that
35 provides for a continuing care contract to be terminated for “just
36 cause,” “good cause,” or other similar provision, shall also include
37 a provision that none of the following activities by the resident,
38 or on behalf of the resident, constitutes “just cause,” “good cause,”
39 or otherwise activates the termination provision:

1 (i) Filing or lodging a formal complaint with the department or
2 other appropriate authority.

3 (ii) Participation in an organization or affiliation of residents,
4 or other similar lawful activity.

5 (B) The provision required by this paragraph shall also state
6 that the provider shall not discriminate or retaliate in any manner
7 against any resident of a continuing care retirement community
8 for contacting the department, or any other state, county, or city
9 agency, or any elected or appointed government official to file a
10 complaint or for any other reason, or for participation in a residents'
11 organization or association.

12 (C) Nothing in this paragraph diminishes the provider's ability
13 to terminate the continuing care contract for good and sufficient
14 cause.

15 (31) A statement that at least 90 days' written notice to the
16 resident is required for a unilateral termination of the continuing
17 care contract by the provider.

18 (32) A statement concerning the length of notice that a resident
19 is required to give the provider to voluntarily terminate the
20 continuing care contract after the cancellation period.

21 (33) The policy or terms for refunding or repaying a lump sum
22 of any portion of the entrance fee, in the event of cancellation,
23 termination, or death. Every continuing care contract that provides
24 for a refund or repaying a lump sum of all or a part of the entrance
25 fee shall also do all of the following:

26 (A) Specify the amount, if any, the resident has paid or will pay
27 for upgrades, special features, or modifications to the resident's
28 unit.

29 (B) State that if the continuing care contract is canceled or
30 terminated by the provider, the provider shall do both of the
31 following:

32 (i) Amortize the specified amount at the same rate as the
33 resident's entrance fee.

34 (ii) Refund the unamortized balance to the resident at the same
35 time the provider pays the resident's entrance fee refund.

36 (C) State that the resident has a right to terminate his or her
37 contract after 18 months of residential temporary relocation, as
38 defined in paragraph (8) of subdivision (r) of Section 1771.
39 Provisions for refunds due to cancellation pursuant to this
40 subparagraph shall be set forth in the contract.

1 (D) (i) State the provider shall make a good-faith effort to
2 reoccupy or resell a unit for which a lump-sum payment is
3 conditioned upon resale of the unit. No later than July 1, 2016, a
4 provider shall provide notice to all current residents with contracts
5 applicable to this subparagraph regarding the statement required
6 by this subparagraph as a clarification of the resident's existing
7 contract.

8 (ii) *The department, in response to a complaint from the resident*
9 *or the resident's estate, may determine if a provider has failed to*
10 *make a sufficient good faith effort to reoccupy or resell a unit for*
11 *which a lump-sum payment is conditioned upon resale of the unit.*
12 *An insufficient good faith effort on behalf of the provider shall*
13 *include, but is not limited to, the failure to undergo the facility's*
14 *refurbishment process for reletting, the failure to make needed*
15 *repairs, the failure to reasonably market the unit to potential*
16 *residents, or the failure to show the unit to prospective residents.*

17 (iii) *If the department makes a determination that a provider*
18 *has failed to make a good faith effort to reoccupy or resell a unit*
19 *pursuant to clause (ii), the provider shall repay the full lump-sum*
20 *payment owed to the resident or resident's estate within 14 days*
21 *of the department's determination, and shall reimburse the*
22 *department for any costs incurred by the department that are*
23 *associated with the department's determination.*

24 ~~(E) For a lump-sum payment, the provider shall state the average~~
25 ~~and longest amount of time that a lump-sum payment has been~~
26 ~~delayed.~~

27 (E) *For all contracts with a repayment of all or a portion of the*
28 *entrance fee conditioned upon the resale of the unit, the provider*
29 *shall state the average and longest amount of time that it has taken*
30 *to resell a unit within the last five calendar years.*

31 (34) The following notice at the bottom of the signatory page:

32 "NOTICE"

(date)

34
35 "This is a continuing care contract as defined by paragraph (8)
36 of subdivision (c), or subdivision (l) of Section 1771 of the
37 California Health and Safety Code. This continuing care contract
38 form has been approved by the State Department of Social Services
39 as required by subdivision (b) of Section 1787 of the California
40 Health and Safety Code. The basis for this approval was a

1 determination that (provider name) has submitted a contract that
2 complies with the minimum statutory requirements applicable to
3 continuing care contracts. The department does not approve or
4 disapprove any of the financial or health care coverage provisions
5 in this contract. Approval by the department is NOT a guaranty
6 of performance or an endorsement of any continuing care contract
7 provisions. Prospective transferors and residents are strongly
8 encouraged to carefully consider the benefits and risks of this
9 continuing care contract and to seek financial and legal advice
10 before signing.”

11 (35) The provider may not attempt to absolve itself in the
12 continuing care contract from liability for its negligence by any
13 statement to that effect, and shall include the following statement
14 in the contract: “Nothing in this continuing care contract limits
15 either the provider’s obligation to provide adequate care and
16 supervision for the resident or any liability on the part of the
17 provider which may result from the provider’s failure to provide
18 this care and supervision.”

19 (36) Provisions describing how the provider will proceed in the
20 event of a closure, including an explanation of how the provider
21 will comply with Sections 1793.80, 1793.81, 1793.82, and 1793.83.

22 (b) A life care contract shall also provide that:

23 (1) All levels of care, including acute care and physicians’ and
24 surgeons’ services, will be provided to a resident.

25 (2) Care will be provided for the duration of the resident’s life
26 unless the life care contract is canceled or terminated by the
27 provider during the cancellation period or after the cancellation
28 period for good cause.

29 (3) A comprehensive continuum of care will be provided to the
30 resident, including skilled nursing, in a facility under the ownership
31 and supervision of the provider on, or adjacent to, the continuing
32 care retirement community premises.

33 (4) Monthly care fees will not be changed based on the resident’s
34 level of care or service.

35 (5) A resident who becomes financially unable to pay his or her
36 monthly care fees shall be subsidized provided the resident’s
37 financial need does not arise from action by the resident to divest
38 the resident of his or her assets.

39 (c) Continuing care contracts may include provisions that do
40 any of the following:

1 (1) Subsidize a resident who becomes financially unable to pay
2 for his or her monthly care fees at some future date. If a continuing
3 care contract provides for subsidizing a resident, it may also
4 provide for any of the following:

5 (A) The resident shall apply for any public assistance or other
6 aid for which he or she is eligible and that the provider may apply
7 for assistance on behalf of the resident.

8 (B) The provider's decision shall be final and conclusive
9 regarding any adjustments to be made or any action to be taken
10 regarding any charitable consideration extended to any of its
11 residents.

12 (C) The provider is entitled to payment for the actual costs of
13 care out of any property acquired by the resident subsequent to
14 any adjustment extended to the resident under this paragraph, or
15 from any other property of the resident that the resident failed to
16 disclose.

17 (D) The provider may pay the monthly premium of the resident's
18 health insurance coverage under Medicare to ensure that those
19 payments will be made.

20 (E) The provider may receive an assignment from the resident
21 of the right to apply for and to receive the benefits, for and on
22 behalf of the resident.

23 (F) The provider is not responsible for the costs of furnishing
24 the resident with any services, supplies, and medication, when
25 reimbursement is reasonably available from any governmental
26 agency, or any private insurance.

27 (G) Any refund due to the resident at the termination of the
28 continuing care contract may be offset by any prior subsidy to the
29 resident by the provider.

30 (2) Limit responsibility for costs associated with the treatment
31 or medication of an ailment or illness existing prior to the date of
32 admission. In these cases, the medical or surgical exceptions, as
33 disclosed by the medical entrance examination, shall be listed in
34 the continuing care contract or in a medical report attached to and
35 made a part of the continuing care contract.

36 (3) Identify legal remedies that may be available to the provider
37 if the resident makes any material misrepresentation or omission
38 pertaining to the resident's assets or health.

1 (4) Restrict transfer or assignments of the resident's rights and
2 privileges under a continuing care contract due to the personal
3 nature of the continuing care contract.

4 (5) Protect the provider's ability to waive a resident's breach
5 of the terms or provisions of the continuing care contract in specific
6 instances without relinquishing its right to insist upon full
7 compliance by the resident with all terms or provisions in the
8 contract.

9 (6) Provide that the resident shall reimburse the provider for
10 any uninsured loss or damage to the resident's unit, beyond normal
11 wear and tear, resulting from the resident's carelessness or
12 negligence.

13 (7) Provide that the resident agrees to observe the off-limit areas
14 of the continuing care retirement community designated by the
15 provider for safety reasons. The provider may not include any
16 provision in a continuing care contract that absolves the provider
17 from liability for its negligence.

18 (8) Provide for the subrogation to the provider of the resident's
19 rights in the case of injury to a resident caused by the acts or
20 omissions of a third party, or for the assignment of the resident's
21 recovery or benefits in this case to the provider, to the extent of
22 the value of the goods and services furnished by the provider to
23 or on behalf of the resident as a result of the injury.

24 (9) Provide for a lien on any judgment, settlement, or recovery
25 for any additional expense incurred by the provider in caring for
26 the resident as a result of injury.

27 (10) Require the resident's cooperation and assistance in the
28 diligent prosecution of any claim or action against any third party.

29 (11) Provide for the appointment of a conservator or guardian
30 by a court with jurisdiction in the event a resident becomes unable
31 to handle his or her personal or financial affairs.

32 (12) Allow a provider, whose property is tax exempt, to charge
33 the resident, on a pro rata basis, property taxes, or in-lieu taxes,
34 that the provider is required to pay.

35 (13) Make any other provision approved by the department.

36 (d) A copy of the resident's rights as described in Section 1771.7
37 shall be attached to every continuing care contract.

38 (e) A copy of the current audited financial statement of the
39 provider shall be attached to every continuing care contract. For
40 a provider whose current audited financial statement does not

1 accurately reflect the financial ability of the provider to fulfill the
2 continuing care contract obligations, the financial statement
3 attached to the continuing care contract shall include all of the
4 following:

5 (1) A disclosure that the reserve requirement has not yet been
6 determined or met, and that entrance fees will not be held in
7 escrow.

8 (2) A disclosure that the ability to provide the services promised
9 in the continuing care contract will depend on successful
10 compliance with the approved financial plan.

11 (3) A copy of the approved financial plan for meeting the reserve
12 requirements.

13 (4) Any other supplemental statements or attachments necessary
14 to accurately represent the provider's financial ability to fulfill its
15 continuing care contract obligations.

16 (f) A schedule of the average monthly care fees charged to
17 residents for each type of residential living unit for each of the five
18 years preceding execution of the continuing care contract shall be
19 attached to every continuing care contract. The provider shall
20 update this schedule annually at the end of each fiscal year. If the
21 continuing care retirement community has not been in existence
22 for five years, the information shall be provided for each of the
23 years the continuing care retirement community has been in
24 existence.

25 (g) If any continuing care contract provides for a health
26 insurance policy for the benefit of the resident, the provider shall
27 attach to the continuing care contract a binder complying with
28 Sections 382 and 382.5 of the Insurance Code.

29 (h) The provider shall attach to every continuing care contract
30 a completed form in duplicate, captioned "Notice of Cancellation."
31 The notice shall be easily detachable, and shall contain, in at least
32 10-point boldface type, the following statement:

33
34 "NOTICE OF CANCELLATION" (date)
35 Your first date of occupancy under this contract
36 is: _____
37

38 "You may cancel this transaction, without any penalty within
39 90 calendar days from the above date.

1 If you cancel, any property transferred, any payments made by
2 you under the contract, and any negotiable instrument executed
3 by you will be returned within 14 calendar days after making
4 possession of the living unit available to the provider. Any security
5 interest arising out of the transaction will be canceled.

6 If you cancel, you are obligated to pay a reasonable processing
7 fee to cover costs and to pay for the reasonable value of the services
8 received by you from the provider up to the date you canceled or
9 made available to the provider the possession of any living unit
10 delivered to you under this contract, whichever is later.

11 If you cancel, you must return possession of any living unit
12 delivered to you under this contract to the provider in substantially
13 the same condition as when you took possession.

14 Possession of the living unit must be made available to the
15 provider within 20 calendar days of your notice of cancellation.
16 If you fail to make the possession of any living unit available to
17 the provider, then you remain liable for performance of all
18 obligations under the contract.

19 To cancel this transaction, mail or deliver a signed and dated
20 copy of this cancellation notice, or any other written notice, or
21 send a telegram

22
23 to _____
24 (Name of provider)

25 at _____
26 (Address of provider's place of business)

27 not later than midnight of _____ (date).

28 I hereby cancel this
29 transaction

30 (Resident's or
31 Transferor's signature)"

32
33 ~~SEC. 2.~~

34 *SEC. 3.* Section 1788.4 of the Health and Safety Code is
35 amended to read:

36 1788.4. (a) During the cancellation period, the provider shall
37 pay all refunds owed to a resident within 14 calendar days after a
38 resident makes possession of the living unit available to the
39 provider.

1 (b) After the cancellation period, any refunds due to a resident
2 under a continuing care contract shall be paid within 14 calendar
3 days after a resident makes possession of the living unit available
4 to the provider or 90 calendar days after death or receipt of notice
5 of termination, whichever is later.

6 (c) In nonequity projects, if the continuing care contract is
7 canceled by either party during the cancellation period or
8 terminated by the provider after the cancellation period, the resident
9 shall be refunded the difference between the total amount of
10 entrance, monthly, and optional fees paid and the amount used for
11 care of the resident.

12 (d) If a resident has paid additional amounts for upgrades,
13 special features, or modifications to the living unit and the provider
14 terminates the resident's continuing care contract, the provider
15 shall amortize those additional amounts at the same rate as the
16 entrance fee and shall refund the unamortized balance to the
17 resident.

18 (e) (1) A lump-sum payment to a resident after termination of
19 a continuing care contract that is conditioned upon resale of the
20 unit shall not be considered to be a refund and may not be
21 characterized or advertised as a refund. The full lump-sum payment
22 shall be paid to the resident within 14 calendar days after resale
23 of the unit. For contracts signed after January 1, 2016,
24 notwithstanding a provider's documented good-faith effort to resell
25 the unit, the resident is entitled to the repayment of a specified
26 portion, pursuant to subparagraphs (A) and (B), of the full
27 lump-sum payment if the unit remains vacant 120 days after the
28 resident's termination. This repayment shall not cause the contract
29 in question to be deemed a refundable contract, as defined in
30 paragraph (2) of subdivision (r) of Section 1771.

31 (A) When a continuing care contract is terminated by the death
32 of a resident, at least 10 percent of the full lump-sum payment
33 shall be paid to the resident's estate within 120 days after the
34 resident's termination.

35 (B) When a continuing care contract is terminated for a reason
36 not described in subparagraph (A), at least 20 percent of the full
37 lump-sum payment shall be paid to the resident within 120 days
38 after the resident's termination.

39 (2) Any payment balance that has not been paid to the resident
40 within 120 days shall accrue interest at a rate calculated pursuant

1 to paragraph (3). Any payment balance that has not been paid to
2 the resident within 180 days ~~will~~ *shall* accrue interest at a rate
3 calculated pursuant to paragraph (4). Interest shall continue to
4 accrue until the date the full lump-sum payment is paid to the
5 resident. This paragraph shall apply *only* to ~~existing and prospective~~
6 ~~continuing care contracts. contracts entered into on or after~~
7 *January 1, 2016.*

8 (3) Any payments that are not paid to the resident within the
9 120-day period pursuant to paragraph (2) ~~will~~ *shall* accrue interest
10 at a rate ~~no not~~ lower than the United States prime lending rate. *4*
11 *percent.*

12 (4) Any payments that are not paid to the resident within the
13 180-day period pursuant to paragraph (2) ~~will~~ *shall* accrue interest
14 at a rate ~~no not~~ lower than ~~2 percent plus the United States prime~~
15 ~~lending rate. 6 percent.~~

16 (f) After the death of a resident, a lump-sum payment that is
17 conditioned upon resale of a unit shall be subject to subdivision
18 (e) and the payment and interest, if any, shall be payable to the
19 resident's estate.

20 (g) Except as otherwise obligated by an equity interest contract,
21 once the unit has been vacated and made available to the provider,
22 the provider shall not make any further charges to the resident or
23 his or her estate or charges against the lump-sum payment that is
24 due to the resident for purposes of continued monthly payments
25 to the provider or for maintenance or housekeeping on the vacated
26 unit.

27 (h) Nothing in this section shall be construed to limit or alter
28 any legal remedies otherwise available to a resident or his or her
29 estate.